

05.09.2023

SL. 9

Court No. 29

Sourav

(Allowed)

C.R.M. (A) 3351 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Karandighi** Police Station Case No. **641** of **2022** dated **16.12.2022** under Sections **21(c)/25/28/29** of the NDPS Act.

And

In the matter of: **Netai Sarkar**

....petitioner.

Mr. Sekhar Basu, Sr. Adv.

Mr. Kaushik Chowdhury

Mr. Gourhari Das

Ms. Busra Khatun

...for the petitioner.

Mr. Sanjoy Bardhan

Ms. Debjani Dasgupta

... for the State.

1. Heard learned Counsel for the parties.
2. Mr. Basu, learned Senior Counsel appearing for the petitioner submits that the basis of implication of the present petitioner is the statement of the co-accused Niaz Ahmed (owner and driver of the truck) and Santosh Gautam (helper of the truck). It is further submitted by Mr. Basu, learned Senior Counsel for the petitioner that both of them who were bringing the illegal consignment of the contraband (11,000 bottles of phensedyl), stated before the I.O. that they are to deliver the consignment to the present petitioner.
3. In course of his submission, on the last occasion Mr. Bardhan, learned Counsel for the State submitted that it is not a case of implication on the basis of statement of co-accused only and a letter has been seized from the possession of the co-accused, Niaz Ahmed (owner and driver of the truck) to

show that the letter addressed to the present petitioner was to the extent that he should keep the aforesaid illegal consignment. For that reason, we had adjourned the case on the earlier occasion requesting Mr. Bardhan, learned Counsel for the State to produce the letter which has been seized.

4. Today, Mr. Bardhan, learned Counsel for the State, with his usual fairness submits that he has received a sealed envelope from the I.O. who is present and said envelope contains the letter. We are surprised that no letter is there in the envelope except some consignment notes with the name of Netai Sarkar as a consignee with the truck number which has been seized and by which the alleged contraband were being carried. The consignment is in respect of wheat only.
5. It is submitted by Mr. Bardhan, learned Counsel for the State that one Asfak of Pratapgarh, U.P. in his statement has stated that he and others loaded the contraband in the truck seized by the police and kept the contraband cough syrup in a hidden manner by loading wheat in the said truck.
6. Mr. Basu, learned Senior Counsel for the petitioner, *per contra*, submits that the consignment note mentioning the truck number is in respect of wheat and not phensedyl. The petitioner might have placed order for wheat and the wheat he had placed order for might be transported in the said truck. So far as the 11,000 bottles of phensedyl is concerned, the aforesaid consignment note *prima facie* does not link the petitioner in the alleged transaction.
7. Further it is submitted by Mr. Basu, learned Senior Counsel

for the petitioner that after hearing Mr. Bardhan, learned Counsel for the State, he is now conscious of the fact that the driver and the helper of the truck might have taken the name of the present petitioner so far as wheat is concerned as they were taking the wheat to the petitioner but so far as the contraband articles are concerned, their statement appears to be still in confusion which is a matter of trial and that cannot be ascertained unless the witnesses are cross-examined.

8. We are one in our view with the submission extended by Mr. Basu, learned Senior Counsel for the petitioner and we are constrained to hold that this is a case of implication of the petitioner on the basis of the statement of the co-accused only. So far as consignment papers are concerned, those are question of prove which is better to be left to the wisdom of the Trial Court. We again reiterate our view that when nothing has been seized from an accused and he is not found to be in conscious possession of the contraband, rigors of Section 37 of the NDPS Act is not applicable and such rigors cannot be said to be absolute.
9. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation, nature of offence and completion of investigation, it is directed that petitioner shall surrender before the learned Judge, Special Court (NDPS Act), Raiganj, Uttar Dinajpur in Special Case arising out of the aforesaid P.S. case within 15 days from today. On his appearance and application for bail petitioner shall be released on bail on such terms and

conditions as deemed just and proper in the facts and circumstances of the case including the condition that petitioner shall appear before the learned Trial Court on each date of substantive hearing subject to provision of Section 317 Cr.P.C.

10. Before parting with the order, we are constrained to say here that the copy of charge-sheet supplied along with the CD by the learned Counsel for the State completely differs from the certified copy of the charge-sheet supplied to us by the I.O. in Court today. The paragraph 17 of the charge-sheet is totally different.
11. The I.O., Mr. Dipankar Ghosh, who is present in Court today submits that inadvertently in course of copy and paste such mistake has been committed and after due correction, proper charge-sheet has been filed before the competent Court.
12. It is ascertained from the I.O. that the I.C. of the P.S. had supervised the case.
13. Such laxity on the part of the police officer is not tolerable as it involves question of liberty of a person and prejudice the prosecution in some cases.
14. We, therefore, direct the S.P., Uttar Dinajpur to look into the matter and we leave it to him to take decision in his discretion after examining all records as to whether any action is to be taken against the police officers.
15. The exhibits in original which are consignment notes and other related documents produced before us today is returned to the I.O., Mr. Dipankar Ghosh in Court today after resealing

the same.

16. The certified copy of the charge-sheet filed before us be taken on record.

17. Accordingly, the prayer for the anticipatory bail is allowed.

18. The application being **CRM (A) 3351 of 2023** is disposed of.

19. Learned Judge, Special Court (NDPS Act), Raiganj, Uttar Dinajpur is hereby directed to act upon the server copy of this order, if required.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

